



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	04/13/11	Bill No:	Senate Bill 34
Tax Program:	Water Resources Assessment	Author:	Simitian
Sponsor:	Author	Code Sections:	Division 36 (commencing with Section 87000) of the Water Code
Related Bills:		Effective Date:	Effective 01/01/12 but operative 07/01/12

BILL SUMMARY

Among other things, this bill would impose an annual water resources assessment upon every retail water supplier in this state to be collected by the Board of Equalization (BOE).

ANALYSIS

CURRENT LAW

Among other things, Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code requires each person or entity that holds a permit or license to appropriate water, and each lessor of water, to pay an annual fee according to a fee schedule established by the State Water Resources Control Board (SWRCB).

Section 1529 requires each person or entity that files a Notice of Extraction and Diversion, as specified, to pay an annual fee according to a fee schedule established by the SWRCB.

Water Code Section 1537 requires the BOE to collect all annual fees and other fees referred by the SWRCB for collection. The fees are collected pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

The fees paid to the BOE are deposited in the Water Rights Fund in the State Treasury.

PROPOSED LAW

This bill would add Division 36 (commencing with Section 87000) to the Water Code to enact the California Water Resources Investment Act of 2011 (Investment Act). Among other things, the Investment Act would, commencing July 1, 2012, impose an annual water resources assessment (assessment) upon every retail water supplier (supplier) in this state for each calendar year as follows:

- An unspecified charge per acre foot of water that is sold for nonagricultural uses.
- An unspecified charge per acre of land that is irrigated for agricultural purposes within the service area of the supplier. The charge would apply to all land irrigated for agricultural purposes, regardless of water source. However, the charge would be reduced for each acre of land the Department of Water Resources (DWR)

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

determines to be utilizing best management practices for the crop and soil type irrigated on that acre.

A program to determine best management practices for irrigated agriculture, based on crop and soil type, would be established by regulations required to be adopted by the DWR on or before July 1, 2013.

A supplier would be authorized to collect the costs of the assessment from its customers by using the amounts specified above or an alternate collection method consistent with the supplier's practices.

Administration. The BOE would be required to collect and administer the assessment in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of collection of the assessment, "feepayer" within the meaning of the Fee Collection Procedures Law would include a supplier.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the BOE. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, and it provides the BOE the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The BOE would be authorized to prescribe, adopt, and enforce regulations for the administration and enforcement of, and may adopt emergency regulations to implement and enforce, the assessment.

Reporting and Payments. The assessment would be due and payable to the BOE by July 1 of the immediately following calendar year. The payment would be required to be accompanied by a return in the form prescribed by the BOE, including, but not limited to, electronic media. The BOE would be authorized to require annual returns and payment for a different period if necessary to ensure payment or facilitate collection of the assessment.

Other Reporting. On or before March 1, 2012, each supplier would be required to submit to the DWR a written statement (1) describing whether it is publicly or privately owned, (2) its official mailing address, (3) a map of its service area, (4) the connection categories used in billing its water customers and number of connections in each category, (5) the volume of water provided to its nonagricultural customers in the immediately preceding calendar year, (6) the number of acres irrigated for agricultural use within its service area, and (7) any other relevant information as determined by the DWR. The DWR would be required to provide the BOE with the written statement information on or before July 1, 2012.

Disposition of Proceeds. This measure would establish the California Water Resources Investment Fund (Fund) in the State Treasury, which would consist of an unspecified number of accounts that the bill would also establish. These accounts include the General Account, State Investment Account, and regional investment accounts.

The BOE would be required to deposit all money collected into the General Account in the Fund, which would then be transferred by the Controller to the State Investment Account (50 percent) and to the regional accounts (50 percent).

The moneys in the State Investment Account would, upon appropriation by the Legislature, be expended for all of the following:

- Refunds of the assessment, interest, and penalties for over payments or due on account of judgments for the return of charges that are unlawfully collected.
- Allocation to the BOE and the DWR to carry out the duties imposed pursuant to the Investment Act.
- Reserve that would be maintained in the State Investment Account, not to exceed an unspecified amount.

The balance of the moneys in the State Investment Account would be expended in accordance with an annual expenditure proposal to fund, in part, projects of statewide and interregional significance, operating expenses of the Delta Stewardship Council and its adopted Delta Plan (including grants and direct expenditures to implement the Delta Plan), projects that reduce the impacts of mercury contamination of the Delta and its watersheds, and scientific studies and assessments that support specified projects.

The moneys in the regional investment accounts, upon appropriation, would be available to fund public benefits of water-related projects and programs, as specified.

Definitions. This bill includes several definitions for key terms, including, but not limited to, the following:

- **"Person"** would mean any individual, estate, business or common law trust, firm, joint stock company, joint venture, business concern, corporation, including, but not necessarily limited to, a government corporation, partnership, limited partnership, limited liability partnership, limited liability company, and any other business entity, and any social club, cooperative organization, fraternal organization, or any other organization or association. "Person" would also include any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.
- **"Retail water service"** would mean water service that is purchased by municipal, industrial, or agricultural water customers without further sale of water to other water customers.
- **"Retail water supplier"** would mean any local entity, including a public agency, city, county, investor-owned utility, municipal water company, or private water company or person that provides retail water service to municipal, industrial, or agricultural water customers.

Effective Date. The bill would become effective January 1, 2012; however, the assessment would commence July 1, 2012.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and intended to pay for costs associated with public-purpose water infrastructure projects and activities.
- 2. Funding necessary for administrative start-up costs.** This bill proposes a new water resources assessment to be imposed beginning July 1, 2012. In order to notify and register suppliers, develop computer programs and reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the BOE's administrative costs that would not already be identified in the BOE's 2011-12 budget.

Typically, the BOE would seek payment from the Fund for administrative start-up costs through the budget change proposal (BCP) process. However, the Fund would not have a balance to reimburse the BOE's administrative start-up costs prior to the collection of the assessment. To address this funding issue, this bill should be amended to add language authorizing a loan from the General Fund, or other eligible fund, to the State Investment Account with repayment from taxes collected and deposited into the Fund.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the assessment program. Without an appropriation for administrative start-up costs, the BOE would have to divert General Fund dollars to the proposed tax program, which would have a negative impact on the revenues of State and local government.

- 3. Best management practices.** This measure provides a reduced assessment rate for each acre of land that the DWR deems to be utilizing best management practices for the crop and soil type irrigated. The DWR would be required to adopt regulations to establish a best management practices program on or before July 1, 2013.

It is not clear how a supplier would know what acreage of land qualifies as "utilizing best management practices" in order to report the correct assessment amount, nor is it clear how the BOE would verify compliance with the best management practices program for audit purposes. Will the agricultural water user determine if they are in compliance with the best management practice program and report that along with the associated acreage to the supplier? How would the BOE verify this information? To address these questions, the author may wish to consider an amendment that would require the DWR to certify acreage of land, by water user, that is in compliance with best management practices program. The water user could then provide the supplier with the certification to document the lower assessment. In addition, the DWR could provide certification information to the BOE for audit verification.

It is also suggested amending Section 87060(a)(2)(B) to make the reduced rate effective January 1 of the calendar year following the year in which the determination is made for the acre of land, beginning January 1, 2014, so that it is in effect for a full assessment period (calendar year). Having the reduced rate for an annual assessment begin in the middle of a reporting period would likely complicate reporting and lead to report errors.

- 4. Region report.** This bill requires, pursuant to Section 87072(c), that the BOE provide a statement of the percentage of the moneys collected attributable to each of the funding regions to the Controller on a quarterly basis. The term “funding regions” is currently not defined in the bill.

In order to obtain the information required to be provided to the Controller, the BOE would have to develop a return schedule for a supplier to allocate assessments collected to the appropriate funding regions. While some retailer water suppliers may service a single region, others may service several regions, which would complicate reporting. Tracking such information would also increase BOE administrative costs related to computer programming. Perhaps the revenues could be allocated to the regional investment accounts based on an annual report of net irrigated land acreage by funding region, similar to the [report](#) prepared by the Department of Finance using DWR’s land use surveys and DWR estimates derived from local agency information.

- 5. Water supplier reimbursement.** Section 87066 authorizes a supplier to collect the costs of the assessment from its customers by using either the specified assessment amounts or an alternate collection method consistent with the supplier’s practices.

It is unclear if Section 87065 is intended to allow a supplier to reimburse itself the assessment by using standard billing amounts (e.g. gallons instead of acre foot), billing the assessment monthly (or other billing cycle) with the water bill, or using some other supplier-specific collection method.

It should be noted that the Fee Collection Procedures Law includes excess fee reimbursement provisions (Revenue and Taxation Code Section 55221.5) that, for purposes of this bill, would provide that when amounts represented by a supplier as constituting reimbursement for the water resource assessment is in excess of the assessment amount and is paid by the water user, the excess amount paid would have to be returned to the water user or remitted by the supplier to the BOE.

In other words, if a supplier uses a collection method that results in more assessment collected from water users than is actually due, those excess amounts collected would be considered excess assessment reimbursement and would be subject to the provisions in Section 55221.5.

To avoid any ambiguity, it is suggested that proposed Section 87066 clarify that amounts collected by a supplier shall not exceed the assessment amount imposed pursuant to Section 87060.

- 6. Technical amendments.** BOE staff is available to work with the author’s office to draft appropriate amendments to address the following concerns:

- **Operative date.** Currently, the bill would impose an annual water resources assessment commencing July 1, 2012. However, it is unclear as to exact effective date and due date of the initial assessment. For example, would the first assessment be due and payable to the BOE by July 1, 2012 for calendar year 2011? If so that would not allow suppliers to be reimbursed the assessment from their customers. Or, would the first assessment be due and payable to the BOE by July 1, 2013 for calendar year 2012?

To avoid any ambiguity, it is suggested amending the bill to clarify that the assessment would apply on or after January 1, 2013. This would clearly provide the effective date of the assessment and would also be consistent with the bill’s

intent of a calendar year assessment, thus avoiding a partial year assessment with a July 1 operative date.

And lastly, the bill would authorize the BOE to require returns and payments for other than annual periods. Accordingly, the due date for the payment of the assessment should be revised to be workable for other reporting periods, such as monthly or quarterly. Currently, the bill provides a due date for the calendar year assessment by July 1, which, if the BOE were to elect to require quarterly reporting, would make the return and payment of the tax due to the BOE the day after the close of the quarterly period. The following language is suggested:

87065. (b) For each calendar year, the water resources assessment imposed pursuant to Section 87060 shall be due and payable to the State Board of Equalization on or before the 25th day of the month following the end of the calendar year~~by July 1 of the immediately following calendar year~~. Payments shall be accompanied by a return in the form prescribed by the State Board of Equalization, and may include, but are not necessarily limited to, electronic media.

- **Duplicate language.** Section 87065(c) would authorize the BOE to require the filing of returns and payments of the assessment for a period different than a calendar year in order to ensure payment or to facilitate collection of the assessment. However, the Fee Collection Procedures Law, under which the BOE would administer and collect the assessment, already authorizes the BOE to require alternate periods for payments and the filing of returns (Revenue and Taxation Code Section 55041.1). As such, the duplicate language could be removed.
- **Electronic registration and payments.** All new programs administered by the BOE should comport with the BOE's electronic services projects and activities, which includes, in part, Internet registration and the transition to e-filing, pursuant to the following.

87065. (b) For each calendar year, the water resources assessment imposed pursuant to Section 87060 shall be due and payable to the State Board of Equalization on or before~~by July 1 of the immediately following~~ calendar year. Payments shall be accompanied by a return in the form prescribed by the State Board of Equalization filed using electronic media,~~and may include, but are not necessarily not limited to, electronic media.~~ Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

87065.5. Every person required to pay the water resources assessment imposed under this chapter shall register with the State Board of Equalization. Every application for registration shall be made upon a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for an account shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

- **Written statement.** Section 87067 requires each supplier to submit, on or before March 1, 2012, a written statement to the DWR that includes specified information, such as an official mailing address. On or before July 1, 2012, the DWR is required to provide the BOE with a list of each supplier, along with other information provided in the written statements.

The assessment would become operative on July 1, 2012, which is the same date the supplier information is due to be provided by the DWR to the BOE. As such, the BOE would not be able to use the information provided by the DWR for implementation purposes to help identify and register taxpayers. It is suggested revising the dates provided in Section 87067 so that the BOE receives a list of each supplier in the state, along with contact information, at least 3 months prior to the operative date of the assessment so that the BOE can properly register all water suppliers in this state for purposes of the assessment program. The previously suggested operative date of January 1, 2013, would address this issue. And lastly, the author may also wish to consider incorporating a penalty for a supplier's failure to timely submit the required statement to the DWR.

- **Conflicting language.** Section 87070(c) requires the BOE to deposit all moneys into the California Water Resources Investment Fund. However, both Sections 87070(b)(1) and 87072(a) indicate that all moneys collected must be deposited into the General Account in the Fund. This conflicting language should be addressed. In addition, in Section 87070(c), the phrase "in accordance with Article 2 (commencing with Section 87060)" appears to refer to the direction to the BOE to "remit" the assessments, which is confusing. Is it meant to refer, instead, to "assessments and any penalties imposed on retail water suppliers"? If so, the phrase should be moved to follow "assessments and any penalties imposed on retail water suppliers." Further, the phrase "in connection with the collection of the assessments by the State Board of Equalization" appears to be superfluous and should probably be struck.
- **Define terms.** To avoid any ambiguity, it is suggested that the terms "sale," "agricultural," and "irrigated" used in Section 87060 and "municipal" used in Section 87040(h) with respect to "customers" be defined.
- **Fee Collection Procedures Law.** Section 87065 should be amended to align the imposition of the assessment with the Fee Collection Procedures Law.

87065. The State Board of Equalization shall collect... of the Revenue and Taxation Code). For purposes of this article, the references in the Fee Collection Procedures Law to "fee" shall include the assessment imposed by this article and references to "feepayer" shall include a retail water supplier~~For purposes of this section, "feepayer," within the meaning of the Fee Collection Procedures Law, shall include a retail water supplier.~~

COST ESTIMATE

The BOE would incur non-absorbable costs to adequately develop and administer a new assessment program. Costs could be related to identifying and registering new suppliers, developing related computer programs, processing returns, payments, claims for refunds, and carrying out compliance and audit efforts to ensure proper reporting, along with developing regulations, training staff, and answering inquiries from the public. An estimate of these costs is pending.

REVENUE ESTIMATE

This measure does not specify the assessment rate amount. Accordingly, a revenue estimate could not be prepared.

Analysis prepared by:	Cindy Wilson	916-445-6036	04/28/11
Contact:	Margaret S. Shedd	916-322-2376	
Is			0034sb041311cw.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.